

AMENDED IN ASSEMBLY JULY 2, 2003

AMENDED IN SENATE MAY 22, 2003

AMENDED IN SENATE APRIL 2, 2003

SENATE BILL

No. 157

**Introduced by Senator Bowen
(Coauthor: Senator Alpert)**

February 11, 2003

An act to add Chapter 1.5 (commencing with Section 6025) to Part 1 of Division 2 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 157, as amended, Bowen. Sales and use taxes: uniformity.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Under the Bradley-Burns Uniform Local Sales and Use Tax Law, counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes.

This bill would enact the ~~Simplified Sales and Use Tax Administration Act~~ *Streamlined Sales Tax Project*. The bill would direct the board, as defined in this bill, or the board's designee, to represent this state in all meetings with certain other states regarding the development of a multistate, voluntary, streamlined system for sales and use tax collection and administration, as discussed in the Streamlined Sales and Use Tax Agreement adopted on January 27, 2001. This bill would also authorize the board to vote on behalf of this state and to represent the position of this state in all matters relating to the adoption of the agreement or amendments to the agreement. This

bill would require the board to report quarterly to the Assembly and Senate Revenue and Taxation Committees on the progress in negotiating the agreement. This bill would prohibit the board or the board's designee from entering into the Streamlined Sales and Use Tax Agreement, unless the agreement requires that each state abide by the particular requirements, as specified in this bill.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 6025) is added to Part 1 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 1.5. ~~SIMPLIFIED SALES AND USE TAX~~
~~ADMINISTRATION~~ STREAMLINED SALES TAX PROJECT

6025. This chapter shall be known as and referred to as the ~~"Simplified Sales and Use Tax Administration Act."~~ "Streamlined Sales Tax Project."

6026. For purposes of this act:

(a) "Agreement" means the Streamlined Sales and Use Tax Agreement.

(b) "Board" means the board of governance, as defined in this act, or the board's designee.

(c) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(d) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(e) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(f) "Sales tax" means the tax levied by Chapter 2 (commencing with Section 6051) of Part 1 of Division 2 of the Revenue and Taxation Code.

(g) “Purchaser” means a person to whom a sale of tangible personal property is made or to whom a service is provided.

(h) “Seller” means any person making sales, leases, or rentals of personal property or services.

(i) “Sourcing” means determining the tax situs of a transaction.

(j) “State” means any state of the United States and the District of Columbia.

(k) “Signatory state” means a state that has entered into the agreement.

(l) “Use tax” means the tax levied by Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code.

6027. (a) There is created in state government a Board of Governance consisting of ~~one member of the Senate chosen by the Senate Committee on Rules, one member of the Assembly chosen by the Speaker of the Assembly, one member of the State Board of Equalization, one member of the Franchise Tax Board, and one member of the Governor’s Department of Finance.~~

(b) The board may represent this state in all meetings, limited only to those states that are also authorized by statute to enter into the agreement. The board shall vote on behalf of this state and shall represent the position of this state in all matters relating to the adoption of or amendments to the agreement.

(c) The board shall report quarterly to the Assembly and Senate Revenue and Taxation Committees on the board’s progress in negotiating the agreement and shall recommend to the committees the state statutes required to be added, amended, or otherwise modified for purposes of substantially complying with the agreement.

~~6028. The state’s adoption of the agreement, pursuant to Section 3, does not invalidate, amend, or otherwise modify, in~~

6028. *The state’s decision to join the Streamlined Sales Tax Project shall not invalidate, amend, or otherwise modify, in whole or in part, any provision of the law of this state. Implementation of any provision of the agreement in this state, whether adopted before, at, or after this state’s adoption of the agreement, shall be exclusively done by a separate act or acts of the Legislature.*

1 6029. The board may not enter into the agreement unless the
2 agreement requires each state to abide by the following
3 requirements:

4 (a) The agreement shall set restrictions to limit over time the
5 number of state rates.

6 (b) The agreement shall establish uniform standards for the
7 following:

8 (1) The sourcing of transactions to taxing jurisdictions.

9 (2) The administration of exempt sales.

10 (3) Sales and use tax returns and remittances.

11 (c) The agreement shall provide a central electronic
12 registration system that allows a seller to register to collect and
13 remit sales and use taxes for all signatory states.

14 (d) The agreement shall provide that registration with the
15 central registration system and the collection of sales and use taxes
16 in the signatory states does not by itself determine whether the
17 seller has nexus with a state for any tax.

18 (e) The agreement shall provide for reduction of the burdens of
19 complying with local sales and use taxes through the following:

20 (1) Restricting variances between the state and local taxes
21 bases.

22 (2) Requiring states to administer any sales and use taxes levied
23 by local jurisdictions within the state so that sellers collecting and
24 remitting these taxes will not have to register or file returns with,
25 remit funds to, or be subject to independent audits from local
26 taxing jurisdictions.

27 (3) Restricting the frequency of changes in local sales and use
28 tax rates and setting effective dates for the application of local
29 jurisdictional boundary changes to local sales and use taxes.

30 (4) Providing notice of changes in local sales and use tax rates
31 and of changes in the boundaries of local taxing jurisdictions.

32 (f) The agreement shall outline any monetary allowances that
33 are to be provided by the states to sellers or certified service
34 providers. The agreement shall allow for a joint public and private
35 sector study of the compliance cost on sellers and certified service
36 providers to collect sales and use taxes or state and local
37 governments under various levels of complexity.

38 (g) The agreement shall require each state to certify
39 compliance with the terms of the agreement prior to joining and



1 to maintain compliance, under the laws of the member state, with
2 all provisions of the agreement while a member.

3 (h) The agreement shall require each state to adopt a uniform
4 policy for certified service providers that protects the privacy of
5 consumers and maintains the confidentiality of tax information.

6 (i) The agreement shall provide for the appointment of an
7 advisory council of private sector representatives and an advisory
8 council of nonmember state representatives to consult with in the
9 administration of the agreement.

10 6030. The agreement ~~authorized by this act~~ is an accord
11 among individual cooperating sovereigns in furtherance of their
12 governmental functions. The agreement provides a mechanism
13 among the member states to establish and maintain a cooperative,
14 simplified system for the application and administration of sales
15 and use taxes under the duly adopted law of each member state.

16 6031. (a) The agreement ~~authorized by this act binds and~~
17 ~~inures shall bind and inure~~ only to the benefit of this state and the
18 other member states. No person, other than a member state, is an
19 intended beneficiary of the agreement. Any benefit to a person
20 other than a state is established by the law of this state and the other
21 member states and not by the terms of the agreement.

22 (b) Consistent with subdivision (a), no person shall have any
23 cause of action or defense under the agreement or by virtue of this
24 state's ~~approval of the agreement~~ *decision to join the Streamlined*
25 *Sales Tax Project*. No person may challenge, in any action brought
26 under any provision of law, any action or inaction by any
27 department, agency, or other instrumentality of this state, or any
28 political subdivision of this state on the ground that the action or
29 inaction is inconsistent with the agreement.

30 (c) No law of this state, or the application thereof, may be
31 declared invalid as to any person or circumstance on the ground
32 that the provision or application is inconsistent with the
33 agreement.

34 ~~6032. (a) A certified service provider is the agent of a seller,~~
35 ~~with whom the certified service provider has contracted, for the~~
36 ~~collection and remittance of sales and use taxes. As the seller's~~
37 ~~agent, the certified service provider is liable for sales and use tax~~
38 ~~due each member state on all sales transactions it processes for the~~
39 ~~seller except as set out in this section. A seller that contracts with~~
40 ~~a certified service provider is not liable to the state for sales or use~~

1 ~~tax due on transactions processed by the certified service provider~~
2 ~~unless the seller misrepresented the type of items it sells or~~
3 ~~committed fraud. In the absence of probable cause to believe that~~
4 ~~the seller has committed fraud or made a material~~
5 ~~misrepresentation, the seller is not subject to audit on the~~
6 ~~transactions processed by the certified service provider. A seller is~~
7 ~~subject to audit for transactions not processed by the certified~~
8 ~~service provider. The member states acting jointly may perform a~~
9 ~~system check of the seller and review the seller's procedures to~~
10 ~~determine if the certified service provider's system is functioning~~
11 ~~properly and the extent to which the seller's transactions are being~~
12 ~~processed by the certified service provider.~~

13 ~~(b) A person that provides a certified automated system is~~
14 ~~responsible for the proper functioning of that system and is liable~~
15 ~~to the state for underpayments of tax attributable to errors in the~~
16 ~~functioning of the certified automated system. A seller that uses a~~
17 ~~certified automated system remains responsible and is liable to the~~
18 ~~state for reporting and remitting tax.~~

19 ~~(c) A seller that has a proprietary system for determining the~~
20 ~~amount of tax due on transactions and has signed an agreement~~
21 ~~establishing a performance standard for that system is liable for the~~
22 ~~failure of the system to meet the performance standard.~~

